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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FRESNO DIVISION

COUNTRY FRESH BATTER, INC., D/B/A
HOPE’S COOKIES, a Pennsylvania
corporation,

Plaintiff,

v.

LION RAISINS, INC., a California corporation,

Defendant.

Case No. 1:17-cv-1527-DAD-BAM

Hon. Dale A. Drozd

**STIPULATED
PROTECTIVE ORDER**

1 Pursuant to Fed. R. Civ. P. 26 Local Rule 141.1 of the Local Rules of the
2 District Court for the Eastern District of California, Plaintiff Country Fresh Batter,
3 Inc., doing business as Hope’s Cookies (“Plaintiff” or “Hope’s”) and Defendant Lion
4 Raisins, Inc. (“Defendant” or “Lion”) hereby stipulate for the purpose of jointly
5 requesting that the Court enter a protective order submit the following stipulation to
6 extend certain currently scheduled discovery deadlines as set forth below.

7 1. PURPOSES AND LIMITATIONS

8 Disclosure and discovery activity in this action are likely to involve production
9 of confidential, proprietary, or private information, including but not limited to, the
10 identities of Defendant Lion Raisins, Inc.’s (“Lion”) customers, the identities of
11 growers of raisins from whom Lion purchase raisins, Lion’s contracts with customers
12 other than Plaintiff, and Lion’s confidential business practices including information
13 related to its harvesting of raisins, storage of raisins, and inventory of raisins. Good
14 cause exists for the special protection of such information from public disclosure and
15 from use for any purpose other than prosecuting this litigation may be warranted, as
16 such information is not publicly available and, if disclosed, will have the effect of
17 causing harm to Lion’s competitive position. Thus, to facilitate the production and
18 receipt of information during discovery in the above-captioned litigation, the parties
19 hereby stipulate to and petition the court to enter the following Stipulated Protective
20 Order. The parties acknowledge that this Order does not confer blanket protections on
21 all disclosures or responses to discovery and that the protection it affords from public
22 disclosure and use extends only to the limited information or items that are entitled to
23 confidential treatment under the applicable legal principles. The parties further
24 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order
25 does not entitle them to file confidential information under seal; Local Rule 141 sets
26 forth the procedures that must be followed and the standards that will be applied when
27 a party seeks permission from the court to file material under seal.

28 2. DEFINITIONS

1 2.1 Challenging Party: a Party or Non-Party that challenges the designation
2 of information or items under this Order.

3 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
4 how it is generated, stored or maintained) or tangible things that qualify for protection
5 under Federal Rule of Civil Procedure 26(c).

6
7 2.3 Counsel (without qualifier): Outside Counsel of Record and House
8 Counsel (as well as their support staff).

9 2.4 Designating Party: a Party or Non-Party that designates information or
10 items that it produces in disclosures or in responses to discovery as
11 “CONFIDENTIAL.”

12 2.5 Disclosure or Discovery Material: all items or information, regardless of
13 the medium or manner in which it is generated, stored, or maintained (including,
14 among other things, testimony, transcripts, and tangible things), that are produced or
15 generated in disclosures or responses to discovery in this matter.

16 2.6 Expert: a person with specialized knowledge or experience in a matter
17 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
18 expert witness or as a consultant in this action.

19 2.7 House Counsel: attorneys who are employees of a party to this action.
20 House Counsel does not include Outside Counsel of Record or any other outside
21 counsel.

22 2.8 Non-Party: any natural person, partnership, corporation, association, or
23 other legal entity not named as a Party to this action.

24 2.9 Outside Counsel of Record: attorneys who are not employees of a party
25 to this action but are retained to represent or advise a party to this action and have
26 appeared in this action on behalf of that party or are affiliated with a law firm which
27 has appeared on behalf of that party.

28 2.10 Party: any party to this action, including all of its officers, directors,

1 employees, consultants, retained experts, and Outside Counsel of Record (and their
2 support staffs).

3 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
4 Discovery Material in this action.

5 2.12 Professional Vendors: persons or entities that provide litigation support
6 services (e.g., photocopying, videotaping, translating, preparing exhibits or
7 demonstrations, and organizing, storing, or retrieving data in any form or medium)
8 and their employees and subcontractors.

9 2.13 Protected Material: any Disclosure or Discovery Material that is
10 designated as “CONFIDENTIAL.”

11 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
12 from a Producing Party.

13 3. SCOPE

14 The protections conferred by this Stipulation and Order cover not only
15 Protected Material (as defined above), but also (1) any information copied or extracted
16 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
17 Protected Material; and (3) any testimony, conversations, or presentations by Parties
18 or their Counsel that might reveal Protected Material. However, the protections
19 conferred by this Stipulation and Order do not cover the following information: (a)
20 any information that is in the public domain at the time of disclosure to a Receiving
21 Party or becomes part of the public domain after its disclosure to a Receiving Party as
22 a result of publication not involving a violation of this Order, including becoming part
23 of the public record through trial or otherwise; and (b) any information known to the
24 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
25 disclosure from a source who obtained the information lawfully and under no
26 obligation of confidentiality to the Designating Party. Any use of Protected Material at
27 trial shall be governed by a separate agreement or order.

28 4. DURATION

1 Even after final disposition of this litigation, the confidentiality obligations
2 imposed by this Order shall remain in effect until a Designating Party agrees
3 otherwise in writing or a court order otherwise directs. Final disposition shall be
4 deemed to be the later of (1) dismissal of all claims and defenses in this action, with or
5 without prejudice; and (2) final judgment herein after the completion and exhaustion
6 of all appeals, rehearings, remands, trials, or reviews of this action, including the time
7 limits for filing any motions or applications for extension of time pursuant to
8 applicable law.

9 5. DESIGNATING PROTECTED MATERIAL

10 5.1 Exercise of Restraint and Care in Designating Material for Protection.

11 Each Party or Non-Party that designates information or items for protection under this
12 Order must take care to limit any such designation to specific material that qualifies
13 under the appropriate standards. The Designating Party must designate for protection
14 only those parts of material, documents, items, or oral or written communications that
15 qualify – so that other portions of the material, documents, items, or communications
16 for which protection is not warranted are not swept unjustifiably within the ambit of
17 this Order.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations
19 that are shown to be clearly unjustified or that have been made for an improper
20 purpose (e.g., to unnecessarily encumber or retard the case development process or to
21 impose unnecessary expenses and burdens on other parties) expose the Designating
22 Party to sanctions.

23 If it comes to a Designating Party's attention that information or items that it
24 designated for protection do not qualify for protection, that Designating Party must
25 promptly notify all other Parties that it is withdrawing the mistaken designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in
27 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
28 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection

1 under this Order must be clearly so designated before the material is disclosed or
2 produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic
5 documents, but excluding transcripts of depositions or other pretrial or trial
6 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each
7 page that contains protected material. If only a portion or portions of the material on a
8 page qualifies for protection, the Producing Party also must clearly identify the
9 protected portion(s) (e.g., by making appropriate markings in the margins).

10 A Party or Non-Party that makes original documents or materials available for
11 inspection need not designate them for protection until after the inspecting Party has
12 indicated which material it would like copied and produced. During the inspection and
13 before the designation, all of the material made available for inspection shall be
14 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
15 it wants copied and produced, the Producing Party must determine which documents,
16 or portions thereof, qualify for protection under this Order. Then, before producing the
17 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend
18 to each page that contains Protected Material. If only a portion or portions of the
19 material on a page qualifies for protection, the Producing Party also must clearly
20 identify the protected portion(s) (e.g., by making appropriate markings in the
21 margins).

22 (b) for testimony given in deposition or in other pretrial or trial proceedings,
23 that the Designating Party identify on the record, before the close of the deposition,
24 hearing, or other proceeding, all protected testimony.

25 (c) for information produced in some form other than documentary and for
26 any other tangible items, that the Producing Party affix in a prominent place on the
27 exterior of the container or containers in which the information or item is stored the
28 legend “CONFIDENTIAL.” If only a portion or portions of the information or item

1 warrant protection, the Producing Party, to the extent practicable, shall identify the
2 protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
4 failure to designate qualified information or items does not, standing alone, waive the
5 Designating Party's right to secure protection under this Order for such material.
6 Upon timely correction of a designation, the Receiving Party must make reasonable
7 efforts to assure that the material is treated in accordance with the provisions of this
8 Order.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
11 designation of confidentiality at any time. Unless a prompt challenge to a Designating
12 Party's confidentiality designation is necessary to avoid foreseeable, substantial
13 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
14 litigation, a Party does not waive its right to challenge a confidentiality designation by
15 electing not to mount a challenge promptly after the original designation is disclosed.

16 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
17 resolution process by providing written notice of each designation it is challenging
18 and describing the basis for each challenge. To avoid ambiguity as to whether a
19 challenge has been made, the written notice must recite that the challenge to
20 confidentiality is being made in accordance with this specific paragraph of the
21 Protective Order. The parties shall attempt to resolve each challenge in good faith and
22 must begin the process by conferring directly (in voice to voice dialogue; other forms
23 of communication are not sufficient) within 14 days of the date of service of notice. In
24 conferring, the Challenging Party must explain the basis for its belief that the
25 confidentiality designation was not proper and must give the Designating Party an
26 opportunity to review the designated material, to reconsider the circumstances, and, if
27 no change in designation is offered, to explain the basis for the chosen designation. A
28 Challenging Party may proceed to the next stage of the challenge process only if it has

1 engaged in this meet and confer process first or establishes that the Designating Party
2 is unwilling to participate in the meet and confer process in a timely manner.

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
4 court intervention, the Designating Party shall file and serve a motion to retain
5 confidentiality under Local Rules 230 and 251 (and in compliance with Local Rule
6 141, if applicable) within 21 days of the initial notice of challenge or within 14 days
7 of the parties agreeing that the meet and confer process will not resolve their dispute,
8 whichever is earlier. Each such motion must be accompanied by a competent
9 declaration affirming that the movant has complied with the meet and confer
10 requirements imposed in the preceding paragraph. Failure by the Designating Party to
11 make such a motion including the required declaration within 21 days (or 14 days, if
12 applicable) shall automatically waive the confidentiality designation for each
13 challenged designation. In addition, the Challenging Party may file a motion
14 challenging a confidentiality designation at any time if there is good cause for doing
15 so, including a challenge to the designation of a deposition transcript or any portions
16 thereof. Any motion brought pursuant to this provision must be accompanied by a
17 competent declaration affirming that the movant has complied with the meet and
18 confer requirements imposed by the preceding paragraph.

19 The burden of persuasion in any such challenge proceeding shall be on the
20 Designating Party. Frivolous challenges, and those made for an improper purpose
21 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
22 expose the Challenging Party to sanctions. Unless the Designating Party has waived
23 the confidentiality designation by failing to file a motion to retain confidentiality as
24 described above, all parties shall continue to afford the material in question the level
25 of protection to which it is entitled under the Producing Party's designation until the
26 court rules on the challenge.

27 7. ACCESS TO AND USE OF PROTECTED MATERIAL

28 7.1 Basic Principles. A Receiving Party may use Protected Material that is

1 disclosed or produced by another Party or by a Non-Party in connection with this case
2 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
3 Material may be disclosed only to the categories of persons and under the conditions
4 described in this Order. When the litigation has been terminated, a Receiving Party
5 must comply with the provisions of section 13 below (FINAL DISPOSITION).

6 Protected Material must be stored and maintained by a Receiving Party at a
7 location and in a secure manner that ensures that access is limited to the persons
8 authorized under this Order.

9 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
10 otherwise ordered by the court or permitted in writing by the Designating Party, a
11 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
12 only to:

13 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
14 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
15 disclose the information for this litigation and who have signed the “Acknowledgment
16 and Agreement to Be Bound” that is attached hereto as Exhibit A;

17 (b) the officers, directors, and employees (including House Counsel) of the
18 Receiving Party to whom disclosure is reasonably necessary for this litigation and
19 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (c) Experts (as defined in this Order) of the Receiving Party to whom
21 disclosure is reasonably necessary for this litigation and who have signed the
22 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (d) the court and its personnel;

24 (e) court reporters and their staff, professional jury or trial consultants,
25 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
26 for this litigation and who have signed the “Acknowledgment and Agreement to Be
27 Bound” (Exhibit A);

28 (f) during their depositions, witnesses in the action to whom disclosure is

1 reasonably necessary and who have signed the “Acknowledgment and Agreement to
2 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
3 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
4 reveal Protected Material must be separately bound by the court reporter and may not
5 be disclosed to anyone except as permitted under this Stipulated Protective Order.

6 (g) the author or recipient of a document containing the information or a
7 custodian or other person who otherwise possessed or knew the information.

8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
9 OTHER LITIGATION

10 If a Party is served with a subpoena or a court order issued in other litigation
11 that compels disclosure of any information or items designated in this action as
12 “CONFIDENTIAL,” that Party must:

13 (a) promptly notify in writing the Designating Party. Such notification shall
14 include a copy of the subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or order to
16 issue in the other litigation that some or all of the material covered by the subpoena or
17 order is subject to this Protective Order. Such notification shall include a copy of this
18 Stipulated Protective Order; and

19 (c) cooperate with respect to all reasonable procedures sought to be pursued
20 by the Designating Party whose Protected Material may be affected.

21 If the Designating Party timely seeks a protective order, the Party served with
22 the subpoena or court order shall not produce any information designated in this
23 action as “CONFIDENTIAL” before a determination by the court from which the
24 subpoena or order issued, unless the Party has obtained the Designating Party’s
25 permission. The Designating Party shall bear the burden and expense of seeking
26 protection in that court of its confidential material – and nothing in these provisions
27 should be construed as authorizing or encouraging a Receiving Party in this action to
28 disobey a lawful directive from another court.

1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
2 IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this action and designated as “CONFIDENTIAL.” Such information
5 produced by Non-Parties in connection with this litigation is protected by the
6 remedies and relief provided by this Order. Nothing in these provisions should be
7 construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to
9 produce a Non-Party’s confidential information in its possession, and the Party is
10 subject to an agreement with the Non-Party not to produce the Non-Party’s
11 confidential information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the Non-Party
13 that some or all of the information requested is subject to a confidentiality agreement
14 with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
17 specific description of the information requested; and

18 (3) make the information requested available for inspection by the Non-
19 Party.

20 (c) If the Non-Party fails to object or seek a protective order from this court
21 within 14 days of receiving the notice and accompanying information, the Receiving
22 Party may produce the Non-Party’s confidential information responsive to the
23 discovery request. If the Non-Party timely seeks a protective order, the Receiving
24 Party shall not produce any information in its possession or control that is subject to
25 the confidentiality agreement with the Non-Party before a determination by the court.
26 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
27 of seeking protection in this court of its Protected Material.

28 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
2 Protected Material to any person or in any circumstance not authorized under this
3 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
4 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
5 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
6 persons to whom unauthorized disclosures were made of all the terms of this Order,
7 and (d) request such person or persons to execute the “Acknowledgment and
8 Agreement to Be Bound” that is attached hereto as Exhibit A.

9 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
10 PROTECTED MATERIAL

11 When a Producing Party gives notice to Receiving Parties that certain
12 inadvertently produced material is subject to a claim of privilege or other protection,
13 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
14 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
15 may be established in an e-discovery order that provides for production without prior
16 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
17 parties reach an agreement on the effect of disclosure of a communication or
18 information covered by the attorney-client privilege or work product protection, the
19 parties may incorporate their agreement in the stipulated protective order submitted to
20 the court.

21 12. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
23 person to seek its modification by the court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this
25 Protective Order no Party waives any right it otherwise would have to object to
26 disclosing or producing any information or item on any ground not addressed in this
27 Stipulated Protective Order. Similarly, no Party waives any right to object on any
28 ground to use in evidence of any of the material covered by this Protective Order.

1 12.3 Filing Protected Material. Without written permission from the
2 Designating Party or a court order secured after appropriate notice to all interested
3 persons, a Receiving Party may not file in the public record in this action any
4 Protected Material. A Party that seeks to file under seal any Protected Material must
5 comply with Local Rule 141.

6
7 13. FINAL DISPOSITION

8 Within 60 days after the final disposition of this action, as defined in paragraph
9 4, each Receiving Party must return all Protected Material to the Producing Party or
10 destroy such material. As used in this subdivision, “all Protected Material” includes
11 all copies, abstracts, compilations, summaries, and any other format reproducing or
12 capturing any of the Protected Material. Whether the Protected Material is returned or
13 destroyed, the Receiving Party must submit a written certification to the Producing
14 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
15 deadline that (1) identifies (by category, where appropriate) all the Protected Material
16 that was returned or destroyed and (2) affirms that the Receiving Party has not
17 retained any copies, abstracts, compilations, summaries or any other format
18 reproducing or capturing any of the Protected Material. Notwithstanding this
19 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
20 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
21 deposition and trial exhibits, expert reports, attorney work product, and consultant and
22 expert work product, even if such materials contain Protected Material. Any such
23 archival copies that contain or constitute Protected Material remain subject to this
24 Protective Order as set forth in Section 4 (DURATION).

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: 10/26/18

/s/Andrew M. Hutchison
Andrew M. Hutchison
Cozen O'Connor
Attorneys for Plaintiff
Country Fresh Batter, Inc.

DATED: 10/26/18

/s/ Bertram T. Kaufmann
Bertram T. Kaufmann
Corporate Counsel
Lion Raisins, Inc.

Brian C. Leighton
Law Offices of Brian C. Leighton
Attorneys for Defendant
Lion Raisins, Inc.

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that
5 I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Eastern District of California on
7 [date] in the case of _____ [**insert formal name of the case and the number**
8 **and initials assigned to it by the court**]. I agree to comply with and to be bound by
9 all the terms of this Stipulated Protective Order and I understand and acknowledge
10 that failure to so comply could expose me to sanctions and punishment in the nature of
11 contempt. I solemnly promise that I will not disclose in any manner any information
12 or item that is subject to this Stipulated Protective Order to any person or entity except
13 in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Eastern District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action.

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Stipulated Protective
22 Order.

23
24 Date: _____

25 City and State where sworn and signed: _____

26
27 Printed name: _____

28 Signature: _____

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ORDER

The Court adopts the stipulated protective order submitted by the parties.

IT IS SO ORDERED.

Dated: November 9, 2018

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE